REPARATION

TO THE

INJURED;

AND THE

RIGHTS OF THE VICTIMS OF CRIME TO COMPENSATION.

A Paper

PREPARED, BY REQUEST,

FOR THE

QUINQUENNIAL INTERNATIONAL PRISON CONGRESS,

BRUSSELS, A.D. 1900.

BY

WILLIAM TALLACK,

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In the official programme of the questions for discussion at the quinquennial International Prison Congress, Brussels, A.D. 1900, the first question in the First Section [Penal Legislation] was the following:—

"In accordance with the lines indicated by the Paris Congress (A.D. 1895), what would be the most practicable means to secure for the victim of an injury the reparation due to him from the offender?"

The Paris Prison Congress had discussed the same subject, but without arriving at any clear or satisfactory conclusion. It was therefore decided to continue the matter, for further consideration at the next similar Congress (at Brussels).

The following paper was prepared, by request of the International Prison Congress Committee, as a contribution towards the solution of the question thus propounded.

REPARATION TO THE INJURED.

Modern Revival of this Question.

At the International Prison Congress held at Stockholm, in 1878, two speakers, the late Sir George Arney, Chief Justice of New Zealand, and the present writer, as Secretary of the Howard Association, advocated, in one of the debates, a more general return, in all nations, to the ancient practice of making reparation to the injured, as far as possible, a principal object in dealing with offenders against the person, or property, of another.

On that occasion, Sir George Arney stated that in New Zealand the British Government had, in their special legislation for the natives, adopted the plan of punishing theft by requiring the offender, in lieu of imprisonment, to pay to the injured party four times the value of the property stolen from him. Repeatedly the Maori chiefs, as responsible representatives of their tribes, paid a part, or the whole, of these fines ; and a general good effect resulted. For not only was justice done to the injured individual, but thefts became increasingly unpopular, owing to their unprofitableness both to the offender and to his tribe.

Since the Stockholm Congress, the question of reparation to the injured has formed an interesting

subject of discussion at other similar assemblies, and also at various gatherings of jurists and students of penal science ; and at the INTERNATIONAL PENITENTIARY CONGRESS of PARIS, in 1895, it was marked for special attention at the following quinquennial meeting at BRUSSELS in 1900.

Amongst those persons who have taken an active part in the discussion of this subject, may be named, in particular, the eminent Italian jurists, M. GAROFALO, M. FIORETTI, and Dr. L. POET ; M. PRINS, the Inspector-General of Belgian Prisons ; Mr. HERBERT SPENCER, of England ; and JEREMY BENTHAM, long previously ; M. ZÜCKER and M. DUBS, of Switzerland ; M. ARMENGOL Y CORNET, of Spain ; with many others, including, especially, the leaders of the FRENCH PRISON SOCIETY, at Paris, whose efforts to elucidate this difficult question have been very praiseworthy.

But notwithstanding the amount of attention thus directed to this question, in so many directions, its solution is still very partial ; and it will be one of the problems which the Twentieth Century may perhaps work out to a more complete extent. And if so, a service of much importance to cosmopolitan and international jurisprudence will have been wrought.

ANCIENT LEGISLATION ON THE SUBJECT.

But, even then, such success will only be a return to the wise legislative principles of remote antiquity, not only amongst the GREEKS and ROMANS, but in the still earlier ages, when the MOSAIC DISPENSATION was established amongst the HEBREWS. That Dispensation, in its

penal department, took special and prominent cognisance of the rights and claims of the injured person, as against the offender. For injuries both to person or property, it enacted restitution, or reparation, in some form, as the chief, and often the whole, element of punishment. And this was wiser in principle, more reformatory in its influence, more deterrent in its tendency, and more economic to the community, than the modern practice, of so often substituting an unremunerative or very costly imprisonment for the ancient mode of treatment.

Reparation (by Fines, etc.,) *versus* Imprisonment.

Imprisonment, even under its best modern conditions, is attended by grave disadvantages; whilst, in its most prevalent forms of administration, it too often tends to the deterioration of the offender, both in body and soul, rather than to his improvement; for its prevalent accompaniments, of corrupting association and of restricted exercise and ventilation, too frequently result injuriously to its subjects. Meanwhile, even effectual deterrence is often lacking, as indicated by the large proportion of re-convictions, in most countries. And it is a rare thing to find a prison even nearly self-supporting by the products of the labour of its inmates, who, therefore, become a heavy burden upon the honest tax-payers outside. And to add to all this, not only is the subject of wanton injury thus left without reparation, but, in many instances, the criminal, who may have cruelly injured him, finds in his prison certain indulgences and advantages of which his poor victim is destitute.

An eminent American authority, the Hon. EDWARD LIVINGSTON, Chancellor of Louisiana, remarks in his *System of Penal Law*, that—"Simple imprisonment has obvious defects. As a corrective, it is nearly the worst that could be applied." He adds that if it is conducted under conditions of individual separation, it is apt to become too severe; whilst under the more usual modes of associated labour, it "becomes a school for vice and every kind of corruption."

Whereas, so far as reparation can be properly secured, in the form of fines or pecuniary penalties, the offender is not subjected to these disadvantages. His family, who may be quite innocent, do not suffer, as by his imprisonment: he has to work out his imposition at his own cost, and not at that of the ratepayer; and he is still surrounded by healthy and natural influences, in a community which contains virtuous and honest persons, in at least a good degree, and does not wholly consist of those who are, presumably, criminals or misdemeanants, as is the case in every prison. These superior conditions have, also, a more reformatory and beneficial tendency than that which, in usual practice, is found to accompany jail life.

THE ANCIENT BRITONS AND REPARATION.

Amongst ancient nations there were some who, though not enjoying so high a degree of civilisation as either the Hebrews, the Greeks or the Romans, yet followed their example in exacting, as a primary mode of penal treatment, the satisfaction, as far as possible, of the injured party, and the recognition of his

rights, as incomparably more important than those of the offender. The Ancient Britons adopted this mode of procedure.

A very sensible writer, the late Rev. William Barnes, "the Dorsetshire Poet," remarks in his *Notes on Ancient Britain*—"To the question, 'What shall we do with our criminals?' my answer would be, Do as the Saxons and Britons did. Try to make them right their wrongs. I say try to do it. Do it as far as you can. I am quite aware it would be hard to make every criminal right every wrong. But the earnest thought of a whole nation would soon find ways of working out an end which may now seem unattainable."

Possibly that author is too sanguine in this expectation. But, at any rate, his counsel to "Try to do it," is a wise one, in this matter, for jurists, penologists, and legislators.

Mr. Barnes asks, "Why should not a criminal be punished in two ways? He sins in two ways. He sins against the subject of the Law, and the upholder of the Law, the Sovereign. And so well aware were the Saxons and Britons of the twofold wrong of a criminal, that they had the *geald* and *gwerth* to right the *private* [or civil] wrong; and a fine called a *wite*, or *camlwrw*, for the [criminal] wrong against the community."

Almost everything amongst the ancient Britons had its rateable "*geald*" or *gwerth* (from which the modern English words *guilt* and *worth* are derived). This was recoverable either from the offender, or from his tribe. And every family, or clan, among the ancient Welsh Britons, was represented by a foreman, or responsible chief, called the Pen-cenedl (or head of the tribe), whose

office was to procure compensation from any other tribe, any of whose members had injured one of his own people, or to collect from his own tribe the reparation for any member of another clan injured by it. He had to secure the righting of the wrong, in either case.

Mr. Barnes also remarks :—" The true end of the law of crime is not the reformation of the criminal, nor terror to other men. The notion that the end of punishment is example, or terror, has worked itself out in shocking atrocities, in many ages and lands, from the flaying of men alive, down to blowing them from guns. And the notion that the end of the law is the reformation of the criminal has often made crime beneficial to a man, and sent eyes to watch almost every pulsation of a criminal's life, and ears to listen for every murmur of his uneasiness ; while the wronged man is left unheeded under all his wrong."

Claims of the Injured.

These last words are but too generally true. In all countries one hears far more of the grievances of criminals than of the sufferings or claims of their victims. Indeed, in some nations the criminal has become a hero in popular estimation. In England, before the passing of the Prisons Act of 1898, during many days of legislative debate and in miles of newspaper advocacy, the rights of injured persons were scarcely mentioned. But everywhere the claims of the criminal, upon humanity, were being urged. In its proper and subordinate place this would be right ; but the unfortunate victim of criminality was habitually

ignored. So much was this the case, that when the Howard Association took occasion publicly to advocate the claims of the injured party, it was met with some silly criticism for being one-sided, precisely because it was endeavouring to regard both aspects, where usually only one is taken into consideration, and that one not the interest of the person who is in the right, but that of him who is in the wrong.

It has been observed, by Professor Zücker, that "The savage violator of female virtue may add to his other injury the atrocity of disfiguring the poor girl whom he has abused, thus spoiling her chances of employment; another wretch may steal the savings of the humble cottager who has given him a lodging; and a third malicious vagabond may set fire to the village where he has begged. All three, if arrested, are treated to a fairly supportable life, whilst their victims may be enduring hunger, cold, and every other privation. At the expiry of their imprisonment, these villains may return home with considerable money gratuities, and even take possession again of the plunder for want of which their victims still suffer, but over whom the liberated malefactors can now exult with vicious satisfaction."

Feudal Retrogression.

It was chiefly owing to the violent greed of feudal Barons and mediæval Ecclesiastical powers that the rights of the injured party were gradually infringed upon, and finally, to a large extent, appropriated by these authorities, who exacted a double vengeance, indeed, upon the offender, by forfeiting his property to them-

selves instead of to his victim, and then punishing him by the dungeon, the torture, the stake, or the gibbet. But the original victim of wrong was practically ignored.

Modern legislation has, however, made considerable progress in rectifying these abuses, and has, in various countries, resumed, to a limited extent, the practice of awarding compensation for injuries to property in particular, and, in less degree also, for injuries to the person, provided, always, that the offenders are possessed of the means from which such satisfaction can be exacted.

Divisions of the Subject.

The subject of reparation divides itself under four heads. No. 1. Reparation for injuries to *Property*, by offenders *with* means. No. 2. Reparation for injuries to *Property*, by offenders *without* means. No. 3. Reparation for injuries to the *person*, by offenders *with* means. No. 4. Reparation for injuries to the *person*, by offenders *without* means.

Reparation by Offenders with Means.

As to No. 1 and No. 3 much has been done, though not so thoroughly, or systematically, as could be desired. Thus the Spanish Code recognises the right of the sufferer, from certain crimes of violence, to a compensation not exceeding £100 (2,400 francs) from the estate of the offender; and if the latter is unable to pay, then he must, in addition to his punishment for the crime, undergo a supplementary imprisonment, not to exceed one year, based upon a calculation of about one day in

jail for every five pesetas, or francs, of estimated injury.

In Norway, by a law of 1894, a tribunal can nullify its own sentence of imprisonment, in certain cases of injury, if, before a prescribed date, the offending party, or his relatives and friends, shall have paid, as reparation to the sufferers, a sum of money fixed by the Court.

The FINLAND CODE imposes pecuniary compensation to the victim of petty thefts, instead of imprisoning the offender, provided the latter is able to pay the fine indicated.

The FOREST LAWS of GERMANY and FRANCE sanction the imposition of so many days' labour, in lieu of imprisonment, as restitution for certain injuries. In GERMANY also, and in AUSTRIA and ITALY, there are various other legal provisions for enforcing reparation for injuries, from offenders who are able to furnish it.

REPARATION AND ENGLISH LEGISLATION.

ENGLISH LEGISLATION has probably made, of late years, greater progress in the recognition of the rights of the injured than any other nation. At any rate, it has done so in many of those cases where it is possible to exact satisfaction from the offender.

Thus the *Malicious Injuries to Property Act*, of 1861, provides compensation for a number of injuries to property, and in certain cases imposes, as an alternative penalty, at the discretion of the magistrate, either so much imprisonment, with or without a whipping, *or* the payment, by the offender, of the value of the injury committed, together with an additional penalty, varying in

amount from £1 to £20, according to circumstances and as may be determined by the magistrate. It is to be noted that this Act rightly fixes a moderate *maximum* of extra payment in each case.

The more recent *Employers' Liability Act* enforces compensation, to a very large extent, from employers and property owners, to persons actually or presumably injured whilst in their service. Indeed, so stringent are some of the provisions of this Act, that in some instances it is considered, by many persons, to go beyond the limits of justice and reason. However, it originated in an excellent principle.

Both in the Civil and the Criminal Courts of ENGLAND (as also in AUSTRIA, GERMANY, NORWAY, and other countries) the injured, whether in property, or person, may obtain compensation, in a number of instances. Of course, there is a wide difference between *civil* and *criminal* cases. In the former the rights of the individual, as such, are concerned; whilst in the latter, the offence to the community, or to the public safety, is mainly taken into account.

For many injuries, in ENGLAND, the sufferer can sue the offender in a *Civil* Court, for damages or reparation, and can *also* prosecute him in a Criminal Court, for punishment.

For one class of injury, COMMON ASSAULTS, where no serious or dangerous harm has been done, English law permits the offended party to proceed against his assailant *either* in a Civil or a Criminal Court, whichever he prefers, but not in both. In many cases he chooses the Civil remedy, and thus recovers compensation. In a multitude of instances,

such compensation is secured without troublesome litigation, as by the summary award of a local County Court. And at times, in cases of Assault, if the offending party expresses his willingness to make pecuniary amends to the injured person, the Magistrate is at liberty to sanction such satisfaction instead of any further exaction, or infliction.

English Law also permits the simple restitution of stolen property, when it remains in possession of the thief. For as Mr. HAROLD WRIGHT remarks in his "*Office of Magistrate*" (p. 66), "The Court before which a person has been convicted may, in certain cases, deal with the property of the prisoner. Thus in the case of Larceny, or stealing of any property, the Court may order, subject to certain exceptions (*e.g.*, a valuable security purchased *bonâ fide* for value), its restitution to the owner. (24 & 25 Vict., c. 96, s. 100.)"

(This simple restitution, however, is of course not the *adequate* penalty for the thief. He requires to be further punished. The Bible plan of double, treble, or even, in some cases, quadruple restoration would often be a reasonable exaction, but not to be *also* accompanied by imprisonment.)

Amongst the other cases in which English law awards compensation to the injured (and sometimes to a large amount) may be mentioned injuries sustained in railway accidents (where any carelessness on the part of the company, or their servants, can be proved); pecuniary satisfaction from an adulterer to the aggrieved husband; or from a seducer to the father of the girl led astray; and payment by the father, to the mother, of an illegitimate child.

Where property is injured by rioters, or a mob, the ancient principle of general local responsibility, or solidarity, is still recognised, and the particular district, or county, has to make pecuniary satisfaction to the losers.

And yet, with all this amount and variety of reparation in England, not only is there no restitution exacted from the majority of thieves, but also a large proportion of the very worst injuries, such as Incendiarism, Burglary, and most of the wholesale hardships inflicted upon Investors who have been swindled by scheming villains, still take place without any compensation being obtained for the sufferers.

Reparation and Offenders without Means.

The great majority of offenders, both against person and property, are themselves destitute of the means of pecuniary reparation. And it is in reference to this very large class, that the chief *crux* or difficulty of the question now consists. It is the problem of securing satisfaction to the injured, by such persons, which still awaits solution by jurists and legislators. This, too, is the chief point on which discussions on the subject, in Prison Congresses and other gatherings, must necessarily turn.

Of course, in reference to pecuniary claims upon destitute offenders, the old proverbs hold good, that "one cannot have a shirt from a naked man," or "extract blood from a stone."

If satisfaction is to be obtained for injuries inflicted by such persons, it must be made, *on their behalf*, either

by their friends, or by the State or community, out of such funds as may be available for the purpose ; and then the State, in its turn, must exact, in lieu of reparation, *some punishment, or service*, from the offender, either in the form of imprisonment, or forced labour under conditional liberation.

But in regard to the last-named mode of reparation, the danger would arise that the conditionally liberated party would, in many cases, take advantage of his liberty to escape from all further liability, by absconding from the neighbourhood, or country, in which he had been residing. And, apart from such danger, there might be special difficulty in the way of an offender obtaining employment under such circumstances. On this point, an eminent authority on crime, Mr. Z. R. Brockway, the well-known superintendent, for many years, of the New York State Reformatory at Elmira, writes to the Howard Association : — "American criminals in general possess no means, and, with the competitions of our crowded free society, no capability, to earn and reimburse. The struggle of the discharged prisoner, under the disadvantages of his situation, is to subsist, merely ; and he is rarely, in addition to his own subsistence, able to earn sufficient to support those dependent upon him. The total possessions, property, and money of the 1,500 prisoners in Elmira is less than 500 dollars in the aggregate."

Further, the supervision of any considerable number of offenders attempting to work out pecuniary restitution for others, in addition to their own maintenance, would entail an extra burden upon the taxpayer, for the payment of special police, or other officials.

And as to the suggestion, made at several Prison Congresses and other gatherings, that destitute offenders should be required to furnish compensation to their victims, out of the earnings of their labour in prison, this is at once seen to be an impracticable idea, whenever it is examined in connection with the actual circumstances of general prison economy. For there are very few prisons in the world where the inmates earn, by their labour, more than a certain proportion, or larger or smaller fraction, of the cost of their detention. So that if any part of their earnings in jail be devoted to the reparation of the injured, this is really a contribution by the State, rather than by the individual offender.

State Reparation to Injured Persons.

Hence, to simplify the whole matter, there seems to be left, in general, and with, perhaps, some exceptions, no other course, so reasonably to be adopted, in reference to the class of victims of destitute offenders, as *that the State itself should assume the whole responsibility of securing for them a certain carefully limited compensation.*

Assuming this course to be adopted, it has been proposed, by several writers and speakers on the subject, that an appropriate source of revenue, for the object of such grants to the victims of destitute offenders, may be found in the aggregate of *Fines*, exacted in most countries from the large number of minor transgressors against law.

There is much to be said in favour of this suggestion; for the total amount of money arising from fines is a

very large sum. In SCOTLAND, it is officially stated to be about £40,000 a year from cases in the Summary Courts alone. This sum goes into the local exchequers, towards the reduction of the rates. As to ENGLAND and WALES, it appears to be impossible, at present, to ascertain the total amount of fines levied, but the aggregate must be very much greater than in Scotland.

OPINIONS IN REFERENCE TO COMPENSATION FROM FINES.

In response to an inquiry by the HOWARD ASSOCIATION, Mr. C. E. TROUP, of the Home Office, London, a gentleman who has rendered eminent services to the British Government, in the department of JUDICIAL STATISTICS, states:—"We have no statistics of the amount of fines; and to call for such statistics would, I believe, involve enormous labour to the Justices' clerks."

Another able statistician, the Hon. Captain G. A. ANSON, Chief Constable of Staffordshire, writes to the HOWARD ASSOCIATION on the same point, that there are about half a million of persons fined annually in England and Wales; and he observes:—"I have no means of estimating the total amount paid in fines by defendants. There are no statistics available; and the fines are paid to such a variety of different funds that the amounts cannot, without great difficulty, be traced. I estimate the amount of fines paid, very roughly, at about £10 per 1,000 of the population, or, say, £300,000 per annum. This is little more than a mere guess, on such foundation as I have, but I have satisfied myself that in this county (Stafford) the amount is at least £7,000 or £8,000 a year, probably £10,000, to a population of 900,000.

Anyhow, the total amount would be ample for the necessities of compensation."

Captain Anson adds the significant remark:—"Of course, all sorts of difficulties would arise in putting into practice this idea of compensation. There would be a great tempation to exaggerate offences, so as to obtain larger restitution."

Another valued correspondent of the Howard Association, Mr. William Simpson, a legal practitioner (at Leicester) of much experience, writes on this subject:—"With reference to the fines yearly imposed and recovered by Courts, you will bear in mind that most of these are for drunkenness and breaches of bye-laws, and other cases in which no personal injury, nor injury to private property, occurs. Consideration must also be given to the fact that there is a wide difference between Civil and Criminal cases. In the former, the individual parties alone are concerned; whilst in the latter, the injury to the public is the sole justification for imposing punishment. It seems to me, therefore, that where fines are imposed in Criminal cases, it is not unreasonable to apply them to the maintenance of the *Criminal* Court, leaving the injured party to his remedy in the Civil Courts, which are open to him."

Direct Compensation by the State.

In view, then, of the almost insuperable difficulties of securing effectual compensation for the victims of destitute offenders, either by the results of prison labour, or by money earned during conditional liberty, and

looking also at the varying local claims already made upon the fines which are imposed (at least in the UNITED KINGDOM), the whole problem would be simplified, and much difficulty of many kinds obviated, *if the State, or Government, would undertake the duty of compensating this particular class*, but only on a limited scale, out of the general revenues derived from taxation, at the same time exacting from the offender, as at present, some chastisement by means of imprisonment.

RESORT TO SURETIES FOR DESTITUTE OFFENDERS.

Yet, even amongst *destitute* offenders, a considerable amount of compensation might, in many cases, be secured, either as a substitute for imprisonment, or as a condition of shortening such detention, if *sureties* were forthcoming for the payment required.

In more than a few instances, *destitute* offenders would have relatives, or friends, who would be willing to become surety, either for the immediate payment of a certain sum by way of reparation, or for its being earned by the offender under conditional liberty. In such cases the State would incur no expense, or liability, for the oversight of the offender ; as in the event of his evading his liability, the sureties would be forfeited.

But in all such cases, the sureties should be made *really sure* at the outset, either by actual payment on the part of the parties thus willing to give bail or guarantee, or by a mortgage on their property. In some of the UNITED STATES of America the non-enforcement, or rather the habitual abuse of "sureties" (so-called) has become a gross public scandal ; for numbers of

deliberate criminals manage to elude punishment by their successful schemes to be left at liberty, on the "bail" or "security" of persons whose "sureties" are either worthless, or are not enforced.

In the case of *destitute* offenders, however, the scale of needful reparation would probably, in most cases, be comparatively limited, and therefore the "sureties" demanded would also be moderate in amount, and the liabilities, consequently, such as might often be readily accepted by others, on the offender's behalf. Hence it is likely that a tolerable proportion of this class of offenders might be able to satisfy the awards of justice, either directly or indirectly, without the necessity for imprisonment.

Exceptional Aid from Prison Labour.

There might occasionally be instances, also, in which, even from prison labour, a certain reparation might be secured. Thus Mr. Frederick Hill, in his book on *Crime*, relates an instance of this kind, as occurring at Aberdeen, at a period when the Scotch prison officials, under Mr. Hill's own inspectorship, made remunerative labour a much more prominent feature of their discipline than has been the case of recent years. A blacksmith, whilst in the jail, was allowed to earn money by working overtime, and thus gained enough to help his family materially during his detention, and also to pay £25 to a person whom he had defrauded by a forged signature to a bill. The same prisoner further earned the means, in prison, to fit up a forge for himself, so as to resume his former occupation on his release.

Although prison earnings and the costs of detention have in general, hitherto, rendered such action as the above impossible, yet it does not necessarily follow that this need always be the case. It must not be assumed that prisons can never be so conducted as to enable their inmates to defray by their labour all the expenses of their imprisonment, and to earn a surplus which might in part be available even for purposes of reparation. But, under existing circumstances, such a possibility appears to be too remote for any practical estimate, or value, in reference to the solution of the problem under consideration.

State Aid to Prosecutions.

As regards England, in particular, there is one reform which certainly ought to be no longer delayed, and which is clearly practicable. The law should never, as often at present, permit a *double* wrong to be inflicted upon the victim of personal injuries. For now it not only leaves him without reparation, but it also requires him, in many instances, to institute, at his own cost of money and time, the prosecution of the offender. The Scotch practice is much superior to that of England in this respect. For in Scotland, in every district, the Procurators Fiscal and the Sheriffs promptly take up and carry through, at the expense of the State, the prosecution of offenders. Whereas in England, the function of the so-called "Public Prosecutor" remains almost a dead letter, or is, at most, very rarely exemplified in practical operation.

Dangers of Fictitious Claims.

Whenever any State, or Government, may adopt the plan of systematically granting reparation to the victims of destitute offenders, it will, at the same time, be necessary to take most careful precautions against imposition and the setting up of false claims, or concerted injuries, in order to obtain money by crimes of conspiracy.

On this point, Mr. Z. R. Brockway writes again to the Howard Association :—"If the State Treasury is to restore fully, to parties robbed, the value of their loss, would it not be an open avenue for the sale of undesirable possessions, for good price ? All the frauds, such as are now attempted and perpetrated against Insurance Companies, would appear, as against the State ; and the vigilance of property holders would be relaxed, since they would lose nothing if their property should be actually stolen. The Insurance Societies in America, against loss from burglary or thieves, have thus failed and have proved to be unprofitable. Such is the possibility of combination between a considerable class of people who possess things of value, and the thieves who steal, that the private interests, as represented in these Insurance Companies, have been unable to protect themselves, and so have lost money, and their insurance business has become unprofitable. Under such a law, vast sums of money might be wrongfully obtained from the Treasury, for goods not stolen but destroyed ; or for goods and property really stolen with the consent of the loser, and for the actual profit of the larceny divided up between himself and the thief."

This is a very valid objection to any proposal that the State should recoup the victim of a destitute offender to a total, or even considerable, extent. The reparation by the State should be kept within very moderate limits, and such reparation should never be made in connection with the permitted immunity of the offender. It would never do for magistrates to be permitted to compensate a person robbed, and at the same time to allow the thief to escape without due chastisement ; for this course also would lead to thefts purposely concerted between owners and thieves.

As already mentioned, the English *Malicious Injuries to Property Act*, of 1861, fixes certain moderate limits of compensation, varying from £1 to £20, for such injuries, to be paid by the offender, where able to pay, as an alternative to imprisonment.

The Destitute Offender not to be Permitted Impunity.

But in cases where the offender, against either person or property, is not able to pay, then any reparation made on his behalf by the State should still be accompanied by his being punished. Thus dishonest collusion and conspiracy would be discouraged.

At present the English law permits an action in a Civil Court to recover compensation for injury to the person, but does not allow a similar action for restitution of property dishonestly appropriated. Yet the former is often more difficult to estimate than the latter. Who can exactly decide on the value of an arm or a finger wilfully destroyed by another ? Whereas a theft of £5

in money, or its equivalent in goods, can be exactly proportioned.

The Hon. Captain Anson suggests to the Howard Association that where an offender is destitute, the Court should award imprisonment to him, and *also* be authorised to award to his victim, from the public purse, some compensation, strictly limited to an amount *proportional* to the imprisonment awarded; even as, now, imprisonment, in default of payment of a fine, is limited to a term considered to be proportional to that fine. Thus, where the fine does not exceed ten shillings the imprisonment must not exceed seven days; twenty shillings, then fourteen days; if £5, one month; £20, two months; and if over £20, then an imprisonment not exceeding three months.

So the amount of compensation might suitably depend on the gravity of the offence, as *measured* by the amount of imprisonment awarded.

By thus simultaneously punishing the offender and limiting the amount of reparation made to the victim, on his behalf, the temptation to collusion, or conspiracy, would be removed from both parties, or at least minimised, whilst justice would at least be approximately done, both to the injured and the injurer.

The Problem not Insoluble.

Of course every attempt to secure reparation to the injured, from *destitute* offenders, can be attended by only partial success. But that is a result common to most human efforts, or, at least, in many departments. There would be difficulties to be met in various directions; but

they need not be insuperable. At any rate, a fair proportion of them might be dealt with. The practical experience and common sense of Judges and Juries might be trusted to deal with them, to a large extent.

Even in the case of persons able to make full pecuniary reparation, for any injury to person or property, it might be necessary, in some instances, to exact, in addition to such reparation, a deterrent punishment; as in the case of a man who deliberately smashed in the windows and furniture of a person he disliked, saying, at the same time, that he would willingly pay a £50 fine for the satisfaction of taking such a revenge. In such instances imprisonment might be needful, in addition to full pecuniary compensation to the injured party.

But, on the whole, by the more general adoption of the alternatives of imprisonment, or adequate restitution, in the case of persons *able* to furnish the latter, and by the combination of a limited compensation by the State, with the punishment of the person *unable* to pay—by the extension of such modes of procedure an important and much-needed advance would be made in the criminal administration of most nations.

Already, various countries have, as above mentioned, made tentative efforts to solve this confessedly difficult problem; and not without some degree of success.

And in the directions here hinted at, in reference to other aspects of the difficulties in question, it is to be hoped that further endeavours may be put forth, and that experience and sound judgment will avail to bring these also to an ultimately satisfactory development.

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